

originator(s) available to consumers in a manner and method practicable to the institution.

(b) A registered mortgage loan originator shall provide his or her unique identifier to a consumer:

- (1) Upon request;
- (2) Before acting as a mortgage loan originator; and
- (3) Through the originator's initial written communication with a consumer, if any, whether on paper or electronically.

APPENDIX A TO SUBPART B OF PART 365—EXAMPLES OF MORTGAGE LOAN ORIGINATOR ACTIVITIES

This Appendix provides examples to aid in the understanding of activities that would cause an employee of an insured State nonmember bank to fall within or outside the definition of mortgage loan originator. The examples in this appendix are not all inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise under this subpart. For purposes of the examples below, the term "loan" refers to a residential mortgage loan.

(a) *Taking a loan application.* The following examples illustrate when an employee takes, or does not take, a loan application.

(1) Taking an application includes: receiving information provided in connection with a request for a loan to be used to determine whether the consumer qualifies for a loan, even if the employee:

- (i) Has received the consumer's information indirectly in order to make an offer or negotiate a loan;
- (ii) Is not responsible for verifying information;
- (iii) Is inputting information into an online application or other automated system on behalf of the consumer; or
- (iv) Is not engaged in approval of the loan, including determining whether the consumer qualifies for the loan.

(2) Taking an application does not include any of the following activities performed solely or in combination:

- (i) Contacting a consumer to verify the information in the loan application by obtaining documentation, such as tax returns or payroll receipts;
- (ii) Receiving a loan application through the mail and forwarding it, without review, to loan approval personnel;
- (iii) Assisting a consumer who is filling out an application by clarifying what type of information is necessary for the application or otherwise explaining the qualifications or criteria necessary to obtain a loan product;
- (iv) Describing the steps that a consumer would need to take to provide information to

be used to determine whether the consumer qualifies for a loan or otherwise explaining the loan application process;

(v) In response to an inquiry regarding a prequalified offer that a consumer has received from a bank, collecting only basic identifying information about the consumer and forwarding the consumer to a mortgage loan originator; or

(vi) Receiving information in connection with a modification to the terms of an existing loan to a borrower as part of the bank's loss mitigation efforts when the borrower is reasonably likely to default.

(b) *Offering or negotiating terms of a loan.* The following examples are designed to illustrate when an employee offers or negotiates terms of a loan, and conversely, what does not constitute offering or negotiating terms of a loan.

(1) Offering or negotiating the terms of a loan includes:

(i) Presenting a loan offer to a consumer for acceptance, either verbally or in writing, including, but not limited to, providing a disclosure of the loan terms after application under the Truth in Lending Act, even if:

(A) Further verification of information is necessary;

(B) The offer is conditional;

(C) Other individuals must complete the loan process; or

(D) Only the rate approved by the bank's loan approval mechanism function for a specific loan product is communicated without authority to negotiate the rate.

(ii) Responding to a consumer's request for a lower rate or lower points on a pending loan application by presenting to the consumer a revised loan offer, either verbally or in writing, that includes a lower interest rate or lower points than the original offer.

(2) Offering or negotiating terms of a loan does not include solely or in combination:

(i) Providing general explanations or descriptions in response to consumer queries regarding qualification for a specific loan product, such as explaining loan terminology (*i.e.*, debt-to-income ratio); lending policies (*i.e.*, the loan-to-value ratio policy of the insured State nonmember bank); or product-related services;

(ii) In response to a consumer's request, informing a consumer of the loan rates that are publicly available, such as on the insured State nonmember bank's Web site, for specific types of loan products without communicating to the consumer whether qualifications are met for that loan product;

(iii) Collecting information about a consumer in order to provide the consumer with information on loan products for which the consumer generally may qualify, without presenting a specific loan offer to the consumer for acceptance, either verbally or in writing;

(iv) Arranging the loan closing or other aspects of the loan process, including communicating with a consumer about those arrangements, provided that communication with the consumer only verifies loan terms already offered or negotiated;

(v) Providing a consumer with information unrelated to loan terms, such as the best days of the month for scheduling loan closings at the bank;

(vi) Making an underwriting decision about whether the consumer qualifies for a loan;

(vii) Explaining or describing the steps or process that a consumer would need to take in order to obtain a loan offer, including qualifications or criteria that would need to be met without providing guidance specific to that consumer's circumstances; or

(viii) Communicating on behalf of a mortgage loan originator that a written offer, including disclosures provided pursuant to the Truth in Lending Act, has been sent to a consumer without providing any details of that offer.

(c) *Offering or negotiating a loan for compensation or gain.* The following examples illustrate when an employee does or does not offer or negotiate terms of a loan “for compensation or gain.”

(1) Offering or negotiating terms of a loan for compensation or gain includes engaging in any of the activities in paragraph (b)(1) of this Appendix in the course of carrying out employment duties, even if the employee does not receive a referral fee or commission or other special compensation for the loan.

(2) Offering or negotiating terms of a loan for compensation or gain does not include engaging in a seller-financed transaction for the employee's personal property that does not involve the insured State nonmember bank.

PART 366—MINIMUM STANDARDS OF INTEGRITY AND FITNESS FOR AN FDIC CONTRACTOR

Sec.

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AUTHORITY: Section 9 (Tenth) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1819 (Tenth); sections 12(f)(3) and (4) of the FDI Act, 12 U.S.C. 1822(f)(3) and (4); and section 19 of Pub. L. 103–204, 107 Stat. 2369.

SOURCE: 67 FR 69991, Nov. 20, 2002, unless otherwise noted.

§366.0 Definitions.

As used in this part:

(a) The word *person* refers to an individual, corporation, partnership, or other entity with a legally independent existence.

(b) The terms *we*, *our*, and *us* refer to the Federal Deposit Insurance Corporation (FDIC), except when acting as conservator or operator of a bridge bank.

(c) The terms *I*, *me*, *my*, *mine*, *you*, and *yourself* refer to a person who submits an offer to perform or performs, directly or indirectly, contractual services or functions on our behalf.

(d) The phrase *insured depository institution* refers to any bank or savings association whose deposits are insured by the FDIC.

§366.1 What is the purpose of this part?

This part establishes the minimum standards of integrity and fitness that contractors, subcontractors, and employees of contractors and subcontractors must meet if they perform any service or function on our behalf. This part includes regulations governing conflicts of interest, ethical responsibility, and use of confidential information in accordance with section 12(f)(3) of the FDI Act, 12 U.S.C. 1822(f)(3), and the prohibitions and the requirements